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ELIMINATION OF APARTHEID AND
ESTABLISHMENT OF A UNITED,
DEMOCRATIC AND NON-RACIAL
SOUTH AFRICA

SECURITY COUNCIL
Forty-ninth year

Letter dated 24 February 1994 from the Chargé d'affaires a.i. of the Permanent Mission of South Africa to the United Nations addressed to the Secretary-General

I have the honour to transmit a situation report by Minister Roelf Meyer, chief government negotiator, on the present status of the constitutional negotiations in South Africa (see annex).

I should be grateful if the present letter and its annex could be circulated as a document of the forty-eighth session of the General Assembly, under agenda item 38, and of the Security Council.

(Signed) F. O. BERGH
Chargé d'affaires
Deputy Permanent Representative

ANNEX

Situation report issued on 22 February 1994 by the Minister of Constitutional Development and of Communication of South Africa

CONSTITUTIONAL NEGOTIATIONS: THE PRESENT POSITION

The constitutional negotiations were completed and the constitution passed by Parliament in December 1993. Since then further attempts have been made to ensure the participation of the Freedom Alliance parties in the transitional process and the April elections. This was done in order to seek a settlement on outstanding constitutional differences and to achieve amendments to the constitution while there was still time to do so before the elections.

This was done through trilateral talks involving the Government, the Freedom Alliance and the African National Congress (ANC) from the beginning of January to early February. No final result could be achieved during this time on account of:

1. The uncompromising stances which some of the parties adopted on various issues.

2. The fact that the Freedom Alliance parties excluded themselves from the Multi-Party Negotiating Process during the second half of last year when the constitution was actually drafted. Thus they were not aware of, and eventually lacked understanding of, the compromises reached during these negotiations, as reflected in the text of the constitution.

3. The absence of a single negotiating position on the part of the Freedom Alliance. At no stage during negotiations were they able to present a uniform position or arrive at a final decision whenever a possible breakthrough was imminent.

4. At no stage did the Freedom Alliance have sanctioning from their respective principals, and they had to refer back to their principals constantly, leading to delays, interruptions, inconclusive meetings and the frequent changing of agendas.

5. The Government had to deal with the different points of departure of individual negotiators in the Freedom Alliance. There were the solution-orientated, and those who were obviously not prepared to seek solutions.

A final attempt to reach trilateral agreements was made on 3 February 1994, when Government presented their package of proposed amendments that could have led to an agreement ensuring participation by the Freedom Alliance. The Freedom Alliance initially reacted positively to these proposals, but were not prepared to bind themselves finally to any solution on that basis.

Since the trilateral talks had failed to bring about a settlement, the Government had to take a different route. That was to go forward and amend the constitution in Parliament with the cooperation of the Negotiating Council. The ANC was approached and agreed to such a process. The Negotiating Council was subsequently convened on 21 February 1994 to consider and approve the package of proposals.

The package of proposals consisted of the following:

1. The amendment of section 126 of the Constitution which deals with the powers and functions of provinces. The reference to concurrency has been deleted in order to make it absolutely certain that the laws passed by the provincial legislatures will prevail over laws passed by the national Parliament on matters listed in Schedule 6 to the Constitution, except for overrides already provided for and previously accepted by the Freedom Alliance.

2. The amendment of sections 155-159 of the Constitution to strengthen the taxing competence of provinces. This was previously agreed to by the Freedom Alliance.

3. The amendment of section 160 of the Constitution to enable provincial legislatures to include specific provisions in their own constitutions regarding their own legislative and executive structures. This will, for example, enable the province of KwaZulu/Natal to make special arrangements for the position of the Zulu monarchy.

4. The amendment of Constitutional Principle XVIII to provide that the powers and functions of provinces, as set out, will not be diminished in the final constitution. This effectively means entrenchment of this most critical provincial provision, according to the Freedom Alliance. No constitutional principle can be changed after the election, even by a 100% majority in Parliament.

5. Changing the name of the province of Natal to KwaZulu/Natal.

6. Adding an additional constitutional principle on the subject of self-determination, including the possibility that it can be exercised in a territorial entity, if constitutionally agreed. Provision is also made by amending Chapter 11 to create a mechanism for conducting further negotiations on the subject of a Volkstaat for those who really want it.

7. Amendments to the Electoral Act to provide for two ballot papers, one for the National Assembly and one for the provincial legislatures and for the extension to 4 March 1994 of the date for parties to register for the elections.

All these amendments have now been approved by the Negotiating Council and will be put before Parliament for deliberation next week. This is a complete package that in fact addresses all the concerns that were raised by the Freedom Alliance. There is now nothing to keep them from participating in the elections. For the sake of our country's future we can only hope that reason will now prevail.

R.P. MEYER, MINISTER OF CONSTITUTIONAL DEVELOPMENT AND OF COMMUNICATION